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IN THE

Supreme Court of the United States

October Term 1940

Nos. 510 511

ESTATE OF CORDELIA Y. ABENDROTH, CITY BANK FARMERS TRUST COMPANY, as Executor of the Last Will and Testament of Cordelia Y. Abendroth, deceased,

Petitioner,

—against—

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ESTATE OF KATE READ BLACQUE, CITY BANK FARMERS TRUST COMPANY, as Executor of the Last Will and Testament of Kate Read Blacque, deceased,

Petitioner,

—against—

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Petition for Writs of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

ROLLIN BROWNE,
JAMES D. OUCHTERLONEY,
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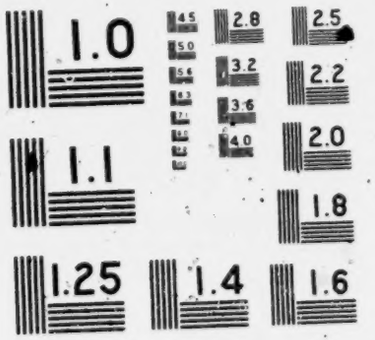

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CITATIONS:

Maass v. *Higgins*, 111 F. (2d) 78, cert. granted October 14, 1940 . . 2, 4, 5, 6

Revenue Act of 1926:
Section 302 (j), as added by Section 202 of Revenue Act of 1935 . . . . . 2, 3, 5

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ESTATE OF KATE READ BLACQUE, CITY BANK FARMERS TRUST COMPANY, as Executor of the Last Will and Testament of Kate Read Blacque, deceased,

Petitioner,

—against—

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Petition for Writs of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

The petitioners above named pray that writs of certiorari issue to review the judgments (R. 114, 116) of the United States Circuit Court of Appeals for the Second Circuit entered in these cases on October 10, 1940, affirming decisions of the Board of Tax Appeals. The cases were consolidated for trial in the Board and for hearing in the Court of Appeals (R. 28, 108).

Summary Statement of Matter Involved.

The only question involved in these cases is precisely the same question which is involved in the case of *Maass, as Sole Surviving Executor of the Last Will and Testament of Ida S. Saks, Deceased,* v. *Joseph T. Higgins, Collector,* which is now pending in this Court (No. 274) on a writ of certiorari granted October 14, 1940.

OPINIONS BELOW.

The majority opinion (R. 86) and the dissenting opinion (R. 87) of the United States Board of Tax Appeals are reported in 41 B. T. A. 1178. The *per curiam* opinion of the Circuit Court of Appeals (R. 113) is not officially reported.

JURISDICTION.

Jurisdiction to issue the writs prayed for is vested in this Court by Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925. The judgments of the Circuit Court of Appeals were entered on October 10, 1940 (R. 114, 116).

QUESTION PRESENTED.

Where an executor elects to exercise the option provided in Section 302(j) of the Revenue Act of 1926, as added by Section 202 of the Revenue Act of 1935, to report the assets of the estate in the Federal estate tax return at their values one year after the decedent's death, must there be included in the gross estate, in addition to the property owned by the decedent at the date of death, the income accruing thereon between the date of death and such optional valuation date?

STATUTE INVOLVED.

There is involved Section 302(j) of the Revenue Act of 1926, as added by Section 202(a) of the Revenue Act of 1935, which, so far as material, reads as follows:

> "If the executor so elects upon his return * * * the value of the gross estate shall be determined by valuing all the property included therein on the date of the decedent's death as of the date one year after the decedent's death, except that (1) property included in the gross estate on the date of death and, within one year after the decedent's death, distributed by the executor * * * or sold, exchanged, or otherwise disposed of, shall be included at its value as of the time of such distribution, sale, exchange, or other disposition, whichever first occurs, instead of its value as of the date one year after the decedent's death, and (2) any interest or estate which is affected by mere lapse of time shall be included at its value as of the time of death (instead of the later date) with adjustment for any difference in its value as of the later date not due to mere lapse of time. * * *"

FACTS.

All the facts were stipulated and are set forth in two stipulations, one applicable to each estate (R. 29, 48).

After Mrs. Abendroth's death, her estate collected $1,793.26 of interest which accrued within one year after the date of her death on bonds owned by her at the date of her death, and $1,990.65 of ordinary dividends declared and payable on stock of corpora-

tions owned by her at the date of her death, out of earnings of the paying corporations, to stockholders of record as of various dates within one year after her death.

After Mrs. Blacque's death, her estate collected $6,653.87 of interest which accrued within one year after the date of her death on bonds owned by her at the date of her death, and $47,210.58 of ordinary dividends declared and payable on stock of corporations owned by her at the date of her death, out of earnings of the paying corporations, to stockholders of record as of various dates within one year after her death.

The items of interest and dividends received after the date of death in each case were not included in the gross estate as reported on the Federal estate tax return filed by the petitioner as executor. The respondent Commissioner of Internal Revenue, on audit of each return, held that such interest and dividends should be included in the gross estate in each case and, based on such holding, the respondent determined a deficiency in the Abendroth estate tax of $432.83 and a deficiency in the Blacque estate tax of $13,996.28.

RULINGS BELOW.

The Board of Tax Appeals, relying on the decision of the court below in *Maass* v. *Higgins, supra, (sub. nom. Saks* v. *Higgins,* 111 F. (2d) 78), approved the deficiencies determined by the Commissioner. Four members of the Board dissented (R. 87).

The court below affirmed, *per curiam,* on authority of its decision in *Maass* v. *Higgins, supra.*

Specification of Errors.

The Circuit Court of Appeals erred, in each case:

1. In holding that Section 302(j) of the Revenue Act of 1926, as amended, required the inclusion in the decedent's gross estate of the interest and dividends accruing after death upon bonds and stocks owned by the decedent at the date of death, and in failing and refusing to hold that such interest and dividends should be excluded from the gross estate.

2. In holding that said interest and dividends constituted a part of the property owned by the decedent at the date of death.

3. In upholding the validity of the regulations of the Treasury Department requiring the inclusion of such interest and dividends in the gross estate.

4. In affirming the decision of the Board of Tax Appeals.

Reasons for Granting the Writ.

On October 14, 1940, a writ of certiorari was issued by this Court to review the decision of the court below in *Maass* v. *Higgins, supra,* which involves the identical question presented in these cases. The allowance of certiorari in that case sufficiently demonstrates the importance of the question and the propriety, and indeed necessity, of a final decision thereon by this Court. Since the question will be presented to and decided by this Court in that case, the petitioners submit that they should be given an opportunity to be heard at the same time.

It is, therefore, respectfully requested that writs of certiorari issue to review the judgments of the Circuit Court of Appeals in these cases and that they be set down for argument immediately after *Maass* v. *Higgins, supra.*

Respectfully submitted,

ROLLIN BROWNE,
JAMES D. OUCHTERLONEY,
GEORGE CRAVEN,
Counsel for Petitioners.

MITCHELL, TAYLOR, CAPRON & MARSH,
Of Counsel.

October 14, 1940.